

REMARKS/ARGUMENTS

35 USC 102(b)

Previously pending claims 1, 3, 5, 6, and 8 were rejected as being anticipated by each of Shaw 3282000 and Shaw 3407550. Those rejections are all obviated by cancellation of the rejected claims.

The new claims 10-32 are all allowable over the cited references. Among other things, all of the newly added claims recite that the bird deterrent is injection molded to have alternating side prongs. Shaw 3407550 has a one-piece structure, but the prongs are not injection molded. Shaw's prongs are metal, and are bent from cutouts. (See spec. col. 2, lines 34-37). Shaw 3282000 may have parts that are amenable to injection molding, but there is no teaching, suggestion or motivation to injection mold the various parts as a single unified piece. At most the rail and prongs are separate pieces that need to be assembled.

These are not minor distinctions. Injection molding such a complex structure as that claimed herein is inherently difficult, and there is no evidence that anyone in the prior art considered it to be practical, or even possible. One key to practicality was to alternate the lateral arms between higher and lower angles.

35 USC 103

Previously pending claim 2 was deemed to be obvious over Shaw '000, and claim 4 was deemed to be obvious over Shaw '000 in view of Donoho 5253444. Those rejections are, of course, obviated by cancellation of the rejected claims, and the new claims all include the injection molded alternating high and low lateral arms. That limitation is not taught, suggested by, or obvious over any combination of the cited art.

Moreover, citation of *In re Larson et al.*, 144 USPQ 347 (C.C.P.A 1965) is inapplicable. The holding of *Larson* was predicated on two observations that have no bearing on the instant application. The first observation was that the term "integral" is not limited to a fabrication of the parts from a single piece of metal, but is inclusive of other means for maintaining the parts fixed together as a single unit. That observation is irrelevant here because the new claims do not

merely recite the term "integral". They require instead that the parts be injection molded as a single piece.

The second observation was that the use of a one-piece construction instead of the structure disclosed in Tuttle et al. was merely a matter of obvious engineering choice. That observation was based on the court's finding that the integration of the parts has no effect on heat transfer, and no other benefit. In contrast, the one-piece construction in the present application is clearly a very significant benefit over multiple piece construction. The latter necessarily involves insertion of thousands of spikes into a channel, and is necessarily very costly. The one-piece construction clearly has a huge cost advantage.

In short, the *Larson* case is not controlling. What is controlling is that the complexity of the claimed construction is such that one of ordinary skill in the art would never have contemplated it.

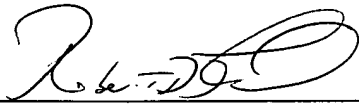
New Claims

The newly added claims are fully supported by the specification. All of the claimed elements are either drawn directly from page 8 of the specification, or are readily apparent in the figures.

Request For Allowance

Claims 10-34 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,
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